

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>PATRICIA KAMMEYER, et al.</b>	:	<b>CASE NO.: C-1-01-649</b>
<b>Plaintiffs,</b>	:	<b>Judge Spiegel</b>
<b>vs.</b>	:	<b>(Magistrate Hogan)</b>
<b>CITY OF SHARONVILLE, OHIO, et al.</b>	:	<b>EXHIBITS IN SUPPORT OF MOTION OF</b>
<b>Defendants.</b>	:	<b>DEFENDANT NUSS TO COMPEL AND</b>
		<b>FOR SANCTIONS</b>

1. Wright letter to Hayes 3-23-97
2. Plaintiffs' Responses To Nuss's Interrogatories And Document Requests Directed To Plaintiffs Kammeyer And Wright (*sealed per doc. # 158*)
3. Plaintiffs' Responses To Nuss's Interrogatories And Document Requests Directed To Plaintiffs Miller And Baker (*sealed per doc. # 158*)
4. Hurley letter to Gerhardstein 1-15-04
5. Hurley letter to Gerhardstein 2-12-04
6. Hurley letter to Gerhardstein 2-16-04
7. Gerhardstein letter to Hurley 2-16-04
8. Hurley letter to Gerhardstein 2-17-04
9. Gerhardstein letter to Hurley of 2-23-04
10. Hurley letter to Gerhardstein 3-3-04

James R. Wright  
2676 Willow Lake Drive  
Greenwood, IN 46143



March 24, 1997

Lt. Alan A. Hayes  
Sharonville Police Dept  
10900 Reading Road  
Sharonville, Ohio 45241

Dear Lt Hayes:

Thank you for allowing me to see the testimony in my Mother's case. I was only able to get through half of the first notebook in the 3 hours I had available. I intend to contact you to make arrangements to review the other 2 1/2 notebooks when I get back from a business trip in 2 weeks or so. Due to the time it takes me, I may have to make a couple of appointments to get through it. Besides wanting to express my appreciation, the other purpose of this letter is to share what I have found so far. I will do this each time I stop out and review the testimony. As I do this, please accept what I have to say in the spirit it is being presented. I want Schuholz arrested for the murder of my mother and am trying to see what I can do to help in this. You cannot imagine what it is to live with this being unsolved for 16 years. In reviewing the info I looked at, several things created questions in my mind. Perhaps they are answered later on in the documentation but as far as I got, they created real questions in my mind.

The first thing I came across was in the beginning of Notebook 1 when the crime scene is being described. A "yellow cloth glove" was found and later fibers from the glove are mentioned. Moving ahead to the first interview with Schuholz, Cramer went to Schuholz's and got a gun from him that was in "a yellow fuzzy cloth glove". Also, in an interview with Perry Baker (page 12) reference is made to a yellow glove and gun again. Speaking from personal experience, I know that Schuholz always used yellow fuzzy work gloves while working. The next point I have a question on is a comment that Cramer makes to Schuholz which is "Al, it's like I told you on the cemetery deal". There is nothing prior to this comment about a cemetery. What is this all about? In the same initial interview, Schuholz is talking about my mother's jewelry and makes reference to "a chest of drawers in her bedroom". Schuholz says in this same interview he was never in my mother's apartment. If so, how did he know there was a chest of drawers in her bedroom? In this same interview, I found it suspicious that the woman that Schuholz was using as his alibi ended up in the hospital with a fractured skull and a black eye. Per Schuholz, "She got hit in the face playing softball." I suspect he is half correct. In the second interview with Schuholz, he lays it out for you. He says, "Maybe they were after Marie and they got Starla as an accessory." In fact, this is exactly what happened and the egomaniac part of Schuholz is challenging you. More about that later. The other and more pertinent comment made by Schuholz was that there was "no

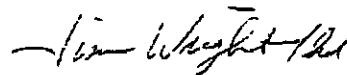
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forcible entry." How did he know that unless he was there? Going to motive, it was pretty obvious why this happened. However, there are comments from a Mr. Bill Burger that addresses motive and as well from Perry Baker testimony ( page 4). The anonymous phone call documented after the Karen Cook testimony was made from a woman who lived at 8729 Ashbrook Drive in West Chester at the time. I can't remember her name but I personally spoke to this women at the time of the homicide. Don't know that it is relevant but can get her name if it becomes important. There are other bits and pieces in what I read but nothing more concrete. I am very bothered in that so much of the testimony is missing due to the tape running out of the recorder. This is all throughout the testimony I read.

Lt. Hayes, you indicated that you were going to assign someone to this case now. If possible, I need to give that individual my insight on how to approach and interview Schuholz. Among his many flaws. Schuholz is an egomaniac as previously referenced. There are vulnerable spots that can be attacked that were not in the testimony I saw. I recognize the long odds of ever solving this case. However, justice and my peace of mind can never occur unless we exhaust every avenue. I appreciate your time and attention to this matter. I recognize that the Sharonville Police Department has limited resources and many active crimes to pursue. However, none is as important to me as this one. I will do whatever I can do to assist you and hope what I have presented here is a beginning step to putting Schuholz where he belongs. I will be in contact as soon as I return.

Sincerely,



Jim Wright

cc: Michael Schappa, Chief of Police

300006

EXHIBIT

4

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January 15, 2004

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**VIA FACSIMILE AND  
REGULAR U.S. MAIL**

Alphonse A. Gerhardtstein, Esq.  
617 Vinc Street, Suite 1409  
Cincinnati, Ohio 45202

Re: Patricia Kammeyer, et al. v. City of Sharonville, et al.  
U.S. District Court, Southern District of Ohio, Case No. C-1-01-649

Dear Mr. Gerhardtstein:

I have been retained to represent William Nuss in connection with the above-referenced case, and am writing to you in that capacity. In the near future my firm will be substituted as trial counsel for Mr. Nuss.

I have enclosed Defendant Nuss's first set of written discovery to Patricia Kammeyer and James Wright and his first set of written discovery to Jan Loraine Miller and Sue Ranielle Baker.

It is my understanding that one of the reasons for the meeting on January 22, 2004 with Judge Spiegel is to set a revised schedule. That is certainly appropriate. However, in order to set a realistic and reasonable schedule it is important to consider a number of things. Those include the fact that, as of this time, neither Randy Freking nor I have been able to meet without respective clients. Another consideration is the time it will take your clients to make full<sup>1</sup> responses to the written discovery requests. Still another consideration are the logistical, legal and evidentiary problems created by your dismissing Mr. Schuhholz as a party.

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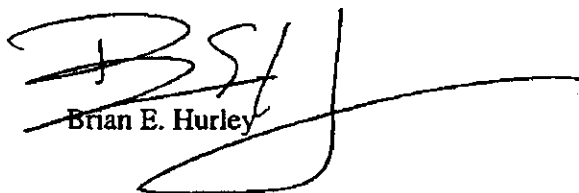
<sup>1</sup>For the most part the interrogatories are contention interrogatories, which require your clients to provide a comprehensive factual response to each interrogatory. Many attorneys believe that contention interrogatories are improper, but they are wrong. See *Starcher v. CMS*, 144 F.3d 418, 421-22 (6<sup>th</sup> Cir. 1998). Moreover, unless your clients already have done what is necessary to obtain certain of the requested document, it will take some time for your clients to obtain them.

Alphonse A. Gerhardstein, Esq.  
January 15, 2004  
Page 2

I recognize that your clients want their day in court, and, if their claims can survive summary judgment, they will get it. However, your clients have made very serious allegations against the defendants about alleged actions most of which occurred over 20 years ago. My client and the other defendants also have rights, and one of those is to be able to fully and properly defend themselves. That right can be protected only if they are given sufficient time to conduct the legitimate discovery to which they are entitled, and a large part of the deposition phase of that discovery cannot commence until your clients have provided full responses to the written discovery.

We will be able to discuss these and other matters when we meet on January 22, 2004. I remain

Very truly yours,



Brian E. Hurley

BEH/1

Enclosure

cc: Thomas Keating, Esq.  
Lawrence Barbieri, Esq.  
Randy Freking, Esq.

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February 12, 2004

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**VIA FACSIMILE**

Alphonse A. Gerhardstein, Esq.  
617 Vine Street, Suite 1409  
Cincinnati, Ohio 45202

Re: Patricia Kammeyer, et al. v. City of Sharonville, et al.  
U.S. District Court, Southern District of Ohio, Case No. C-1-01-649

Dear Mr. Gerhardstein:

During the conference with Judge Spiegel you insisted that the trial of this case take place this year. When Judge Spiegel said that he was inclined to agree with you, I stated that it was essential that plaintiffs provide complete and timely responses to my client's first set of interrogatories and document requests. Judge Spiegel agreed, and both you and Mr. Laufman committed to doing so.

Plaintiffs' responses are due on February 14, 2004. I cannot properly prepare my client for his deposition unless I have received full responses<sup>1</sup> to the discovery requests on that date. Incomplete or vague responses, baseless objections, and/or "will supplement" responses are not acceptable and will jeopardize my client's deposition and possibly the trial date.

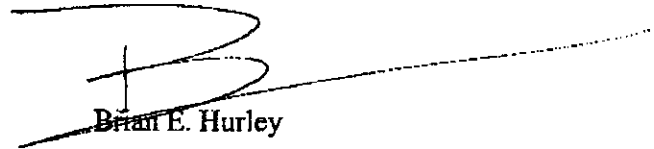
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<sup>1</sup>I again remind you that the Sixth Circuit has held that contention interrogatories are appropriate, and your clients are required to provide complete, factual responses to those type of interrogatories.

Alphonse A. Gerhardstein, Esq.  
February 12, 2004  
Page 2

I look forward to having in my possession full responses to my client's initial discovery requests by February 14, 2004 and remain

Very truly yours,



Brian E. Hurley

BEH/ll

cc: Thomas Keating, Esq.  
Lawrence Barbieri, Esq.  
Randy Freking, Esq.

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February 16, 2004

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**VIA FACSIMILE**

Alphonse A. Gerhardstein, Esq.  
617 Vine Street, Suite 1409  
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Re: Patricia Kammeyer, et al. v. City of Sharonville, et al.  
U.S. District Court, Southern District of Ohio, Case No. C-1-01-649

Dear Mr. Gerhardstein:

Plaintiffs' responses to my client's first written discovery requests were due on February 14, 2004. Despite making the representation to Judge Spiegel that full responses to those requests would be made in a timely manner while you were at the same time insisting on a November/December 2004 trial date, I have not received the responses. This conduct is severely prejudicing my client's ability to prepare his defense, and this letter will serve as my first attempt to resolve this matter.

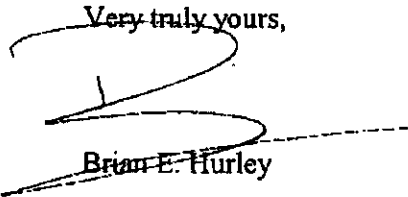
It is my understanding that you are no longer available for depositions on March 2 and 3, 2004, and have inquired about the week of March 8, 2004. I will be taking depositions in Cleveland each day that week, and, as such, am not available at any time that week.

When you provide Larry with dates on which you are available to take the depositions of Messrs. Cramer, Schappa and Nuss, please include other dates for the depositions of Plaintiffs and the persons identified by Plaintiffs in their discovery responses choose whose depositions defendants choose to take.



Alphonse A. Gerhardstein, Esq.  
February 16, 2004  
Page 2

I remain

Very truly yours,  
  
Brian E. Hurley

BEH/ll

cc: Thomas Keating, Esq.  
Lawrence Barbieri, Esq.  
Randy Freking, Esq.

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February 16, 2004



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*Via facsimile to (513) 651-2570*  
Randolph H. Freking  
Freking & Betz  
215 E. Ninth St.  
Cincinnati, OH 45202

Re: **Kammeyer, et al. v. City of Sharonville, et al.**  
**USDC, No. C-1-01-649**

Dear Counsel:

Brian Hurley has written reminding us of his contention interrogatories. We do object to the contention interrogatories. These are much more appropriate at a later stage of discovery and obviously cannot be answered completely at this stage. We are nonetheless preparing answers so we can all move forward. As you know we are all extremely hampered by having to access the sealed documents only by physically going to look at them. Much of the material responsive to the contention interrogatories is in those sealed records. We are also scheduling reviews of the 12 boxes of additional material in Mr. Barbieri's possession and hope to have that done this week. But just last week we learned that there are additional documents in the property room we must also review.

We are currently creating a disk with nonsealed documents we have collected in scanned form with bates numbers. Many of those documents will assist in the responses to the contention interrogatories. As I explained to Larry last week, I have asked the service doing this work to adjust the formatting so all of the documents are searchable by word. I am told all of the scanning and formatting will be completed so that you will have a very accessible document collection by Tuesday, February 24, 2004. We will have the discovery responses to you by that date as well. I spoke to Larry about moving the depositions back to March 10 and 12 which should provide ample time to review the discovery responses.

February 16, 2004  
Page Two

I trust this will address your concerns. Call me if you have questions.

Sincerely

A handwritten signature in cursive script, appearing to read "A A Gerhardstein".

Alphonse A. Gerhardstein

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February 17, 2004

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**VIA FACSIMILE**

Alphonse A. Gerhardstein, Esq.  
617 Vine Street, Suite 1409  
Cincinnati, Ohio 45202

Re: Patricia Kammeyer, et al. v. City of Sharonville, et al.  
U.S. District Court, Southern District of Ohio, Case No. C-1-01-649

Dear Mr. Gerhardstein:

I am in receipt of your facsimile letter of February 16, 2004 to defense counsel.

While I appreciate your keeping other counsel apprised of the reasons for Plaintiffs' late responses to my client's first discovery requests, that does not change the fact that they are late.

Your clients' responses were due on February 14, 2004, and I did not agree to any extension of time. In fact, when we met with Judge Spiegel I made clear that timely and full responses were absolutely necessary for me to prepare my client for his deposition and because you insisted that trial be set for November.

Your objection relating to contention interrogatories is baseless.<sup>1</sup> They are proper, and Plaintiffs do not get to choose for their opponents what they characterize as the "appropriate" form of discovery the opponents should pursue. Moreover, you have already waived the right to make any objection that you might have had. If I receive objections to the contention interrogatories and/or incomplete responses, I will be forced to file a motion to compel. I hope that it will not be necessary to take that action.

As you have been aware since January 23, 2004, I will be in Costa Rica from February 24 through March 1, 2004. By failing to provide Plaintiffs' responses until February 24, 2004, when I will already have left the United States, you will make it impossible for me to fully and properly

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<sup>1</sup> I again cite you to *Starcher v. CMC*, 144 F.3d 418, 421-22 (6<sup>th</sup> Cir. 1998).

Alphonse A. Gerhardtstein, Esq.  
February 17, 2004  
Page 2

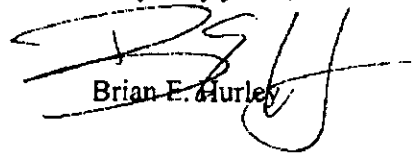
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prepare my client for his deposition. If I do not have full responses to my client's interrogatories and documents in my possession by February 19, 2004, his deposition will not go forward on either March 2 or 3, 2004.<sup>2</sup>

Finally, in my letter to you of yesterday I requested that you provide dates when you are available for depositions of Plaintiffs and other witnesses. You have ignored that request. I reiterate the request by this letter, and, should you choose to ignore it again, I will be forced to choose dates that are convenient for defense counsel and notice the depositions for those dates. I hope that will not be necessary.

I remain

Very truly yours,



Brian E. Hurley

BEH/mlp

cc: Thomas Keating, Esq.  
Lawrence Barbieri, Esq.  
Randy Freking, Esq.

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<sup>2</sup> Assuming full responses are received by February 24, 2004. I will make my client available for deposition on March 19, 2004. If full responses are not received by that date, we will wait for the court's ruling on the motion to compel to choose a date for my client's deposition.

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Re: Kammeyer, et al. v. City of Sharonville, et al.  
USDC, No. C-1-01-649

Dear Counsel:

We will proceed with depositions of defendant Cramer on March 2, 2004 and defendant Schappa on March 3, 2004. Pursuant to Brian Hurley's request we will proceed with the deposition of defendant Nuss on March 19, 2004. All depositions will take place at Larry Barbieri's office and start at 9:30 a.m. Amended deposition notices will be sent out.

The Cramer interrogatory responses are not yet due so the demand for responses from Randy Freking is premature. Paul Laufman returned Randy's call from Thursday but did not get a call back. We are on schedule with Defendant Nuss's discovery responses as described in my last letter. We will also have responses to the discovery propounded by Defendants City of Sharonville and Schappa tomorrow. All of these responses are subject to supplementation as we have not completed a thorough review of the 12 boxes at Larry Barbieri's office nor reviewed the material in the property room yet. Larry said that he was creating an inventory of that material. Call me or Paul Laufman if you have questions.

Sincerely

A handwritten signature in cursive script, reading "A. A. Gerhardstein".

Alphonse A. Gerhardstein

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**Crabbe, Brown & James** LLP



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March 3, 2004

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**Dictated But Not Read**

**VIA FACSIMILE - c/o (513) 583-4203**

Alphonse A. Gerhardstein, Esq.  
617 Vine Street, Suite 1409  
Cincinnati, Ohio 45202

Re: Patricia Kammeyer, et al. v. City of Sharonville, et al.  
U.S. District Court, Southern District of Ohio, Case No. C-1-01-649

Dear Mr. Gerhardstein:

I am in receipt of your letter of February 23, 2004 and Plaintiffs' responses to my client's discovery requests. Because it was received by my office when I was in Costa Rica and I did not return to Cincinnati until early morning March 2, 2004, I did not until today have the opportunity to respond.

Everything I have done is designed to fully and properly represent my client, Bill Nuss, is permitted by the rules of civil procedure, and is dictated by the short period of discovery that you insisted on. My pointing out your and your clients' unwillingness to meet their discovery obligations and your refusal to honor your word to the Court and me with respect to those requests is hardly "nasty." It is merely a statement that is both factual and accurate. Moreover, this is hardly a game being played, at least by me, and, while there is no doubt that your clients' loss is tragic, their loss was in no way caused by Mr. Nuss.

When I started drafting my client's motion to compel your clients' responses were already nine days overdue and you had stated that, when the responses were made, you did not intend to fully respond to the contention interrogatories. In addition, you had not committed to a date when the incomplete responses would be made even though Mr. Nuss's deposition was set for March 3, 2004. I would not describe that as being ready to "pounce."

Alphonse A. Gerhardstein, Esq.  
March 3, 2004  
Page 2

Your clients' responses to most of the interrogatories are incomplete and not acceptable. This is particularly true with respect to the contention interrogatories. First, a 1985 case decided by a district court from California does not have quite the same authoritative weight as a 1998 decision by the Sixth Circuit. Second, the fact that plaintiffs have not seen the sealed documents is a reason why contention interrogatories are the best form of discovery available to Mr. Nuss. It is imperative that full responses be made to the requests so that it is not necessary for defendants to spend the time and money for depositions with the likely result being that we are unable to obtain the information that would be in full responses to these interrogatories. Third, with a discovery cut-off of July 1, 2004 that you insisted upon, Mr. Nuss's requests are not only appropriate; they are necessary at this stage of discovery. Quite simply, it is patently unfair and prejudicial that Mr. Nuss not be fully informed through your clients' discovery responses of all of the facts you and your clients' have knowledge of to support each of your clients' allegations. We are very concerned that Mr. Nuss not be fully informed of these facts before his deposition is taken. This is his right, and the fact that he retired as the Chief of Police fourteen years ago makes it that much more important that he exercise this right. Any other approach would be grossly unfair to Mr. Nuss. Further, it could very well result in Mr. Nuss unintentionally providing incomplete and possibly inaccurate responses to the questions posed to him during his deposition, the risk of which will be greatly reduced if full responses to the interrogatories are received prior to his deposition.

I have not yet had the chance to thoroughly review the documents you have produced to determine whether the responses are complete. I will attempt to do so by the end of next week. However, even a cursory review establishes that the responses are inadequate in the following ways:

1. Both the federal rules and Mr. Nuss's Directions in his document requests require that your clients respond to each request separately. There are important reasons for this requirement, and your clients have totally ignored it. Rather, they have chosen to provide in bulk documents as a "RESPONSE TO ALL REQUESTS." This is not acceptable, and it is significantly prejudicial to Mr. Nuss.

2. A number of documents withheld on the basis of privilege are in no way privileged or protected. The documents you describe as "e-mail among family" (300013-17, 300024-25, 300139-143, 300144-145, and 300101) may well be "private," but they are not protected from discovery.

3. With respect to the Jay Clark letter (30003-4) and Jay Clark file (180001-180067), you have not provided the information necessary to assess whether none, some or all are protected or, if they are, if a waiver has occurred. For each of these documents, as well as the documents described as "Notes from attorney contact" (300154), please provide the following information so that, in accordance with Rule 26(b)(5), we can do the assessment:

- a. the date of the document;



Alphonse A. Gerhardstein, Esq.  
March 3, 2004  
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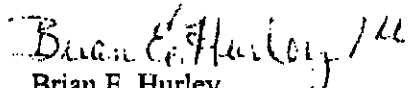
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- b. the author(s);
- c. the recipient(s), including those who were copied with the document;
- d. the identity of each person who has reviewed the document;
- e. a brief description of the nature of the document; and
- f. the basis for the assertion of privilege.

4. Your clients' are seeking an award of attorneys' fees in this case. As such, the fee agreement they have reached with you is discoverable.

I have no desire to file a motion to compel, and, for that reason, am making this effort to resolve these matters. I look forward to your response, and remain

Very truly yours,

  
Brian E. Hurley

BEH/ll

cc: Thomas Keating, Esq.  
Lawrence Barbicre, Esq.  
Randy Freking, Esq.

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